

REMARKS

The Office Action of 07/10/2007 has been carefully considered. Reconsideration in view of the foregoing amendments and the present remarks is respectfully requested.

A REPLACEMENT SHEET is submitted herewith in which relative thicknesses of the second and third electrodes have been indicated as claimed.

Claims 1, 2, 4 and 6 were rejected as being anticipated by Peng. Claims 1, 2, 4, 6, 7 and 10 were rejected as being anticipated by Mehta, and claims 5, 8 and 9 were rejected as being unpatentable over the same. Claim 3 was rejected as being unpatentable over Mehta in view of Needham. These rejections are respectfully traversed and reconsideration requested.

As recited in claim 1, a MEMS element has a construction such that a current path through the MEMS element comprises *the piezoelectric layer* and a tunable gap. No such feature is taught or suggested by the cited references.

Rather, in the cited references, the piezoelectric layer is used to bring two electrodes into contact, the current path being established between the two electrodes but *not* including the piezoelectric layer. This may be seen in Peng in which the current path is established between the two electrodes 201 and 401 but *not* including the piezoelectric layer 103. (Note paragraph 0018 of Peng, which states "Proper electrical connections and necessary circuits to the first electrode 201 and the second electrode 401 are provided but are not shown in this figure.")

This may also be seen in Figure 3 of Mehta in which the current path is established between the two electrodes 219 and 220 but *not* including the piezoelectric layer 211. The layer 216 is an insulating layer.

Withdrawal of the rejections and allowance of claims 1, 2 and 4-10 is respectfully requested.

Respectfully submitted,



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